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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 434

GEORGE C. ADCOCK, E. Z. YEAGER AND GUS GULAS, INDIVIDUALLY AND ON BEHALF OF OTHER CITIZENS DULY REGISTERED AND QUALIFIED AS VOTERS OF ALABAMA, SIMILARLY SITUATED, *Petitioners,*

vs.

ROBERT B. ALBRITTON, TOM ABERNATHY, EDMUND BLAIR, BEN BLOODWORTH, WALTER C. GIVHAN, TULLY A. GOODWIN, NORMAN W. HARRIS, JOHN A. LUSK, JR., GESSNER T. McCORVEY, WALTER F. MILLER AND HORACE C. WILKINSON, PRESIDENTIAL AND VICE PRESIDENTIAL ELECTORS OF THE STATE OF ALABAMA,

Respondents

PETITION FOR WRIT OF CERTIORARI

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioners, George C. Adcock, E. Z. Yeager and Gus Gulas, individually and on behalf of other citizens duly registered and qualified as voters of Alabama, similarly situated, respectfully pray for a Writ of Certiorari

to the Supreme Court of the State of Alabama to review a decision and order of the said court in the above entitled case dated November 19, 1948.

This petition for Writ of Certiorari is supplementary to and in aid of the Petition for Injunction and Writ of Mandamus filed by petitioners with your Honorable Court on November 23, 1948.

I

Summary Statement of the Matter Involved

Petitioners are duly registered and qualified voters of the State of Alabama. At the Democratic primary elections held in the State of Alabama on May 4, 1948 the respondents were elected as candidates of the Democratic Party for the office of presidential and vice presidential electors and, running as such candidates, under the name and the symbol of the Democratic Party were duly elected as presidential electors at the general election held November 2, 1948. The statutes of the State of Alabama in Section 226, Title 17 of the Alabama Code, expressly provide that presidential and vice presidential electors of the State of Alabama:

> ". . . shall cast their ballots for the nominee of the National Convention of the party by which they were elected."

The National Convention of the Democratic Party held in Philadelphia, Pennsylvania in July, 1948 duly nominated Harry S. Truman and Alben W. Barkley as the candidates of the Democratic Party for President and Vice President, respectively, of the United States. Notwithstanding the provision of the Alabama Statute above quoted, the respondents have publicly stated that they will not cast their votes for the said Harry S. Truman and Alben W. Barkley but that on the contrary they will cast the same for J. Strom

Thurmond and Fielding H. Wright, nominated as candidates for President and Vice President, respectively, by a political party or organization known as the "States Rights" Party.

On the 10th day of November, 1948 your petitioners brought suit in the Circuit Court of the 10th Judicial Circuit of Alabama against the respondents praying for a temporary injunction restraining the respondents from casting their electoral ballots for any person or persons other than Harry S. Truman and Alben W. Barkley, the nominees for President and Vice President, respectively, of the National Convention of the Democratic Party and for a permanent injunction restraining them from casting their ballots except as aforesaid and a mandatory writ of injunction commanding them to cast their ballots for the said Harry S. Truman and Alben W. Barkley.

On November 18th the Honorable E. M. Creel, Judge of the Circuit Court of the said 10th Judicial Circuit, denied petitioners' petition for a temporary injunction and endorsed a notation of such denial upon the petition, whereupon petitioners, pursuant to the provisions of Title 7, Section 1045 of the Code of Alabama, made application to the justices of the Supreme Court of Alabama for the issuance of a temporary writ as prayed for in said petition.

On the 19th of November, 1948, the Honorable Arthur B. Foster, J. Ed. Livingstone, Thomas S. Lawson, Robert T. Simpson and Davis F. Stakely, five of the seven justices of the Supreme Court of Alabama, signed an order denying petitioners' petition for a temporary writ of injunction. As reason for their action, the justices assigned the ground that petitioners' right to a temporary writ of injunction is controlled by an advisory opinion of the justices of the Supreme Court of Alabama dated April 1, 1948 (34 S. 2nd 598) and that they continued to entertain the same opinion concerning the matter in issue as that expressed in said

advisory opinion. In the advisory opinion referred to the justices of the Supreme Court of Alabama held that the provision of the Alabama Statute above quoted requiring presidential electors to cast their ballots for the nominees of the National Convention was void in that it was violative of Article II of the Constitution of the United States.

The petition filed by petitioners in the Circuit Court of the 10th Judicial Circuit of Alabama, the endorsement of the Circuit Judge thereon and the decision and order of the justices of the Supreme Court of Alabama are set forth in full as exhibits to the Petition for Injunction and Writ of Mandamus filed in this Honorable Court on November 23, 1948, as aforesaid.

In view of the reaffirmation by the justices of the Supreme Court of Alabama of their advisory opinion of April 1, 1948, it would seem apparent that any other hearings, arguments or proceedings before the State Courts on the merits of petitioners' petition for an injunction would be futile and that the question of the constitutionality of the provision of the Alabama Statute in issue has been finally decided so far as the Courts of that State are concerned.

II

Basis of Jurisdiction

The jurisdiction of this Court is invoked under Section 1257 (3) of Title 28 of the United States Code, the validity of a state statute having been drawn in question on the ground of its being repugnant to the Constitution of the United States, and petitioners also having been denied a right, privilege or immunity specifically set up or claimed under the 14th Amendment of the Constitution of the United States and Section 43, Title 8, of the United States Code.

III

Question Presented

The question presented to this Court is whether or not the provision of Section 226, Title 17 of the Code of Alabama requiring presidential and vice presidential electors of that state to cast their ballots for the nominees of the National Convention of the party by which they are elected is violative of Article II of the United States Constitution.

IV

Reasons Relied upon for Allowance of the Writ

The justices of the Supreme Court of Alabama have decided a federal question of substance not theretofore determined by this Court. The question presented, namely, whether presidential electors may, in defiance of the practices and usages of this country over a period of more than a century and of the express mandate of the legislature of their states, cast their ballots in such manner as they, in their arbitrary and uncontrolled direction, may see fit is one of basic national importance.

The answer to this question goes far beyond the individual rights of petitioners as voters of the State of Alabama. The rights of voters of the entire United States and in fact the integrity of the entire time-honored constitutional procedure for the election of the Chief Executive of the United States is involved. If respondents are free to cast their electoral ballots as they see fit then the same applies to the presidential electors of all other states of the Union. If electors in sufficient number should follow the course proposed by respondents the election of November 2, 1948 will have been rendered a nullity and the will and intention of millions of voters defeated. The end result of such a course would be confusion and quite possibly disorder of a serious nature.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Your petitioners recognize that there is no controlling authority governing the question presented here and that this is the first time the issue has ever been presented to the Court. On the public importance of the question it is sufficient to cite the following statement from the opinion of this Court in *Burroughs* v. *United States,* 290 U. S. 534, at p. 545:

> "The President is vested with the executive power of the nation. The importance of his election and the vital character of its relation to and effect upon the welfare and safety of the whole people cannot be too strongly stated."

The serious question of constitutional interpretation here presented was discussed by this Court in *McPherson* v. *Blacker,* 146 U. S. 1, at p. 36, as follows:

> "• • • Doubtless it was supposed that the electors would exercise a reasonable independence and fair judgment in the selection of the Chief Executive, but experience soon demonstrated that, whether chosen by the legislatures or by popular suffrage on general ticket or in districts, they were so chosen simply to register the will of the appointing power in respect of a particular candidate. In relation, then, to the independence of the electors the original expectation may be said to have been frustrated. Miller, Const. Law, 149; Rawle, Const. 55; Story, Const. § 1473, The Federalist, No. 68. But we can perceive no reason for holding that the power confided to the states by the Constitution has ceased to exist because the operation of the system has not fully realized the hopes of those by whom it was created. Still less can we recognize the doctrine, that because the Constitution has been found in the march of time sufficiently comprehensive to be applicable to conditions not within the minds of

its framers, and not arising in their time, it may therefore, be wrenched, from the subjects expressly embraced within it, and amended by judicial decision without action by the designated organs in the mode by which alone amendments can be made."

Respectfully submitted,

JEROME PHILLIPS,
Birmingham, Alabama;
J. BROUGHTON LAMBERTH,
Montgomery, Alabama;
ARNOLD, FORTAS & PORTER,
THURMAN ARNOLD,
1200 Eighteenth Street, N. W.,
Washington, D. C.,
Counsel for Petitioners.

NOVEMBER 26, 1948.